

OPEN MEETING ITEM

COMMISSIONERS  
GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION



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EXECUTIVE DIRECTOR

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

DATE: FEBRUARY 10, 2011

DOCKET NO.: W-01961A-06-0037

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Rodda. The recommendation has been filed in the form of an Order on:

LUCKY HILLS WATER COMPANY  
(WAIVER OF CONDITION OF DECISION NO. 69381)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

FEBRUARY 22, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 1, 2011 and MARCH 2, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission  
DOCKETED

FEB 10 2011

DOCKETED BY

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

[www.azcc.gov](http://www.azcc.gov)

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail [SABernal@azcc.gov](mailto:SABernal@azcc.gov)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman  
4 BOB STUMP  
5 SANDRA D. KENNEDY  
6 PAUL NEWMAN  
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF  
9 LUCKY HILLS WATER COMPANY FOR AN  
10 EXTENSION OF ITS CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY.

DOCKET NO. W-01961A-06-0037

DECISION NO. \_\_\_\_\_

ORDER

12 Open Meeting  
13 March 1 and 2, 2011  
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 \* \* \* \* \*

17 Having considered the entire record herein and being fully advised in the premises, the  
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On March 22, 2007, the Commission issued Decision No. 69381 which approved the  
21 application of Lucky Hills Water Company ("Lucky Hills" or "Company") for an extension of its  
22 Certificate of Convenience and Necessity ("CC&N").

23 2. As part of Decision No. 69381, the Commission ordered Lucky Hills to file "a copy of  
24 the Approval of Construction for a new 2,000 gallon storage facility to serve its existing service area,  
25 within 12 months of the effective date of this decision."

26 3. Based on the effective date of Decision No. 69381, the original due date for Lucky  
27 Hills to install the storage tank would have been March 22, 2008.

28 4. On March 21, 2008, Lucky Hills filed a motion for a six-month extension of time,  
until September 22, 2008, to file the Approval of Construction ("AOC") for the storage facility. In  
2008, the Commission's Utility Division ("Staff") contacted Ms. Patti Bright, the Company's

1 manager, who indicated that the tank was ordered in March 2008, received in April 2008, and that the  
2 Company was preparing for its installation. Staff states that it counseled the Company that it needed  
3 to work diligently to comply with Commission requirements. In response, Staff states that Ms. Bright  
4 indicated that Lucky Hills only had four customers, that Ms. Bright operates the Company on her  
5 own, and that the Company did not order the tank earlier because the Company did not have  
6 sufficient funds.

7 5. On May 21, 2008, Staff filed a Memorandum addressing the Company's request for an  
8 extension, and recommended that the deadline for filing the AOC be extended until November 22,  
9 2008.

10 6. By Procedural Order dated June 9, 2008, the deadline in Decision No. 69381 was  
11 extended until November 22, 2008.

12 7. On July 21, 2009, Lucky Hills filed a Notice of Compliance Action Regarding  
13 Decision No. 69831. In its filing, the Company provided evidence that because Lucky Hills provides  
14 service to less than 15 connections and less than 25 people, the Arizona Department of  
15 Environmental Quality ("ADEQ") would not issue an AOC for the new storage tank. The Company  
16 requested that the Commission find that the Company is in compliance with the terms and conditions  
17 set forth in Decision No. 69831 even though it has not submitted an AOC from ADEQ.

18 8. On February 3, 2010, a Staff Engineer visited the Lucky Hills site and confirmed that  
19 the 2,000 gallon storage tank was installed.

20 9. On April 5, 2010, Staff filed a Memorandum in which Staff recommends that the  
21 AOC requirement contained in Decision No. 69831 be waived and that the Company be found to be  
22 in compliance with the terms and conditions set forth in Decision No. 69831.

23 10. Staff explained that it made its original recommendation regarding the AOC in 2006 in  
24 the context of a CC&N extension application, when Staff believed that Lucky Hills would expand its  
25 customer base, but that because of the subsequent economic down-turn, the Company has not had any  
26 growth since 2006.

27 11. As confirmed by Staff's investigation, Lucky Hills has installed the required 2,000  
28 storage tank, but cannot comply with the requirement to file an AOC because for systems with less

1 thAn 15 connections, the addition of a storage tank is not subject to ADEQ engineering review and  
2 ADEQ does not issue an AOC.

3 12. Consequently, good cause exists to waive the requirement in Decision No. 69831 for  
4 Lucky Hills to file an AOC from ADEQ for the 2,000 gallon storage tank.

5 **CONCLUSIONS OF LAW**

6 1. Lucky Hills is a public service corporation within the meaning of Article XV of the  
7 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

8 2. The Commission has jurisdiction over Lucky Hills and the subject matter of the  
9 request pursuant to Article XV of the Arizona Constitution and A.R.S. § 40-252.

10 3. Notice of the application was provided in accordance with law.

11 4. Staff's recommendations are reasonable.

12 5. For the reasons set forth herein, good cause exists to waive the requirement in  
13 Decision No. 69381 to file an AOC for the new storage tank.

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**ORDER**

IT IS THEREFORE ORDERED that the obligation contained in Decision No. 69381 for Lucky Hills Water Company to file an Approval of Construction from the Arizona Department of Environmental Quality for its 2,000 gallon storage tank is hereby waived.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: W-01961A-06-0037  
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